

PROSKAUER ROSE LLP

Attorneys for MarketAxess Holdings Inc.
and MarketAxess Corporation
1585 Broadway
New York, New York 10036
(212) 969-3000
Jeffrey W. Levitan
Eric A. Jokinen

Objection Deadline: October 13, 2008

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	: Chapter 11
	:
LEHMAN BROTHERS HOLDINGS INC.,	: Case No. 08-13555 (JMP)
<u>et al.</u>,	: Jointly Administered
	:
Debtors.	: Re Docket No. 564
-----X	
SECURITIES INVESTOR PROTECTION	:
CORPORATION,	:
Plaintiff,	:
	:
v.	: Adversary Proceeding No.
	: 08-01420 (JMP)
LEHMAN BROTHERS INC.	:
Debtor.	:
	:
-----X	

**JOINT CURE AMOUNT OBJECTION AND RESERVATION OF RIGHTS
OF MARKETAXESS HOLDINGS INC. AND MARKETAXESS CORPORATION**

**TO: THE HONORABLE JAMES M. PECK,
UNITED STATES BANKRUPTCY JUDGE**

MarketAxess Holdings Inc. and its wholly-owned subsidiary, MarketAxess Corp.

(together, "MarketAxess"), by their counsel, Proskauer Rose LLP, hereby submit their joint cure
amount objection and reservation of rights (the "Cure Amount Objection") with respect to the
"Notice of Revised Exhibit A to Notice of Revisions to Schedules of Certain Contracts and
Leases Assumed and Assigned to Purchaser," filed by the above-captioned debtors and debtors

in possession (collectively, the “Debtors”) in connection with the sale of certain of the Debtors’ assets to Barclays Capital Inc. (“Barclays”) (the “Revised Cure Notice”) [Docket No. 564].¹ In support of this Cure Amount Objection, MarketAxess respectfully represents as follows:

Background

1. On November 30, 2000, MarketAxess Holdings Inc. (formerly known as Market Axess Inc.) and Lehman Brothers Inc. (“LBI”) entered into a “MarketAxess Dealer Agreement” (as amended from time to time, together with any other amendments, addenda, supplements, related invoices, or other documents, the “LBI Dealer Agreement”), pursuant to which LBI purchased a non-exclusive, non-transferable license to use an Internet-based, interactive electronic data communications system offered by MarketAxess (the “MarketAxess System”) that enables LBI to effect bond-related transactions.

2. On March 25, 2002, MarketAxess Holdings Inc. (by its predecessor, Market Axess Inc.) and Lincoln Capital Management (“Lincoln”) entered into a “MarketAxess User Agreement” (the “Lincoln User Agreement”) pursuant to which Lincoln Capital Management purchased a license to use the MarketAxess System to obtain data, pricing, research and other information regarding bonds and to effect bond-related transactions. Lehman Brothers Asset Management LLC, a non-debtor subsidiary of Lehman Brothers Holdings Inc., is the successor-in-interest to Lincoln under the Lincoln User Agreement.

3. MarketAxess Corporation and LBI, on behalf of Lehman Brothers Fixed Income Prop Trading Desk (“Lehman Prop Trading Desk”), entered into a “MarketAxess User

¹ Capitalized terms not defined in this Cure Amount Objection shall have the meanings ascribed to them in the Revised Cure Notice.

Agreement” (the “Prop Trading Desk User Agreement”) pursuant to which Lehman Prop Trading Desk purchased a license on terms similar to those of the Lincoln User Agreement. It is unclear whether Lehman Prop Trading Desk is a separate legal entity from LBI or a division thereof.

4. On June 29, 2006, MarketAxess Corporation and LBI entered into an “Inter-Dealer Trading System Subscriber Agreement” (the “Inter-Dealer Agreement”) (such agreement, together with the Prop Trading Desk User Agreement, the LBI Dealer Agreement and the Lincoln User Agreement, the “MarketAxess Agreements”),² pursuant to which LBI purchased a license to access and utilize MarketAxess’s electronic inter-dealer trading system.

Cure Amount Objection

5. The Revised Cure Notice directs contract parties to a designated website, <http://chapter11.epiqsystems.com/lehman>, where schedules of Closing Date Contracts are posted. An entry for MarketAxess appears on a schedule entitled “List of Non-IT Closing Date Contracts (excluding Corporate Real Estate)” (the “Contract Schedule”). The entry lists a cure amount, but does not describe with any specificity which of the MarketAxess Agreements the Debtors sought to assume. Thus, the Contract Schedule is materially deficient in that it is virtually impossible for MarketAxess or this Court to determine which of the MarketAxess Agreements are Closing Date Contracts to be assumed and assigned to Barclays.

² Copies of the MarketAxess Agreements are not attached hereto because they are proprietary such that the terms and information contained therein are confidential. If required, copies can be submitted under seal or otherwise made available to this Court for *in camera* review.

6. Prior to October 1, 2008, the cure amount respecting the MarketAxess Agreements (the “Cure Amount”) was listed by the Debtors on the Contract Schedule as \$236,000. Subsequently, the Debtors revised the Contract Schedule and now list the Cure Amount as \$1,000. To avoid any ambiguity, MarketAxess is filing this statement that the correct Cure Amount as of the date hereof is \$ \$648,422.71, plus any other amounts that have accrued. The Cure Amount is allocated to the MarketAxess Agreements as follows:

<u>LBI Dealer Agreement</u>	\$615,735.76
<u>Lincoln User Agreement</u>	\$11,312.94
<u>Prop Trading Desk User Agreement</u>	\$19,254.02
<u>Inter-Dealer Agreement</u>	\$1,595.00

Thus, as best as MarketAxess can determine based on the limited information provided on the Contract Schedule, the Cure Amount listed thereon is drastically understated.

7. Notwithstanding the lack of information provided on the Contract Schedule, to facilitate efforts to validly assume and assign the MarketAxess Agreements to Barclays, MarketAxess has attempted to identify which of the MarketAxess Agreements the Debtors potentially may be intending to assume and assign to Barclays, and to calculate the full cure amounts required to be paid to MarketAxess as a condition to the Debtors’ assumption and assignment thereof.³

³ It should be noted that the Lincoln User Agreement, and possibly the Prop Trading Desk User Agreement, are between MarketAxess and non-debtor affiliates of the Debtors. Thus, absent MarketAxess’ consent, these contracts may not be assumable by the Debtors and assignable to Barclays for that reason alone. Nonetheless, out of an abundance of caution, MarketAxess has described them within this Objection and stated the relevant cure amounts. Their inclusion in this objection shall not be deemed a waiver of any of MarketAxess’ rights, claims, defenses and objections, all of which are expressly reserved. MarketAxess reserves the right to amend this objection to add any additional contracts with the Debtors (or that appear to

8. MarketAxess does not wish to interfere with legitimate efforts to assume and assign any or all of the MarketAxess Agreements to Barclays. However, to ensure compliance with the requirements of Section 365 of the Bankruptcy Code, to provide MarketAxess with a full and fair opportunity to determine which specific MarketAxess Agreements the Debtors are designating as Closing Date Contracts, and to ensure that MarketAxess receives the full cure amounts due in respect thereof, MarketAxess requests that, at a minimum, the Court require the following relief as a condition to the assumption and assignment of any MarketAxess Agreements to Barclays: the Debtors should be required to amend the Contract Schedule to clearly and conspicuously identify the specific MarketAxess Agreements that the Debtors intend to be Closing Date Contracts together with the Debtors' proposed cure amounts therefor on a contract-by-contract basis.

9. MarketAxess is willing and available to enter into discussions with both the Debtors and/or Barclays to attempt to resolve any disputed cure amounts relative to the MarketAxess Agreements, and to address any of its own related issues and concerns. However, MarketAxess respectfully submits that the Court should not authorize the assumption and assignment of the MarketAxess Agreements to Barclays absent reasonable procedures that, at a minimum, enable MarketAxess to identify the specific MarketAxess Agreements the Debtors are purporting to assume and assign to Barclays and to reconcile the cure amounts applicable thereto.

be with Debtors) that may subsequently be identified, or to revise the cure amounts stated herein to reflect any additional amounts that may be subsequently identified.

Reservation of Rights

10. MarketAxess reserves all of its rights in connection with the matters set forth herein, including without limitation, the right to contest any purported assumption and assignment by the Debtors of any MarketAxess Agreements that may be between MarketAxess and non-debtor affiliates of the Debtors. MarketAxess also expressly reserves its rights to amend, supplement or modify this Objection and the cure amounts described herein. MarketAxess also adopts any additional arguments raised by other parties objecting to the Revised Cure Notice to the extent not inconsistent with its own arguments and positions.

WHEREFORE, MarketAxess requests that this Court grant MarketAxess relief consistent with the issues raised in this Objection and that the Court grant MarketAxess such other and further relief as is just and proper.

Dated: New York, New York
October 13, 2008

Respectfully Submitted,

PROSKAUER ROSE LLP

By: /s/ Jeffrey W. Levitan
Jeffrey W. Levitan
Eric A. Jokinen
1585 Broadway
New York, New York 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

Attorneys for MarketAxess Holdings Inc. and
MarketAxess Corporation